

1 KAREN P. HEWITT
United States Attorney
2 CALEB E. MASON
Assistant United States Attorney
3 California Bar No. 246653
Federal Office Building
4 880 Front Street, Room 6293
San Diego, California 92101-8893
5 Telephone: (619) 557-5956/(619)235-4716(Fax)
Email: caleb.mason@usdoj.gov

6 Attorneys for Plaintiff
7 United States of America

8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 UNITED STATES OF AMERICA,	)	Criminal Case No. 08-2123JLS
	)	Date: July 25, 2008
11 Plaintiff,	)	Time: 1:30 p.m.
)	
12 v.	)	The Honorable Janis L. Sammartino
)	
13 SALVADOR RAMIREZ-QUEBEDO,	)	UNITED STATES' NOTICE OF MOTIONS
	)	AND MOTIONS FOR:
14 Defendant.)	
	)	(1) FINGERPRINT EXEMPLARS;
15 _____	)	(2) RECIPROCAL DISCOVERY; AND
	)	(3) LEAVE TO FILE FURTHER
	)	MOTIONS

16
17
18
19
20 PLEASE TAKE NOTICE that on July 25, a 1:30 p.m., or as soon thereafter as counsel may
21 be heard, plaintiff, UNITED STATES OF AMERICA, by and through its counsel, Karen P. Hewitt,
22 United States Attorney, and Caleb E. Mason, Assistant United States Attorney, will move the Court
23 to enter an order granting the following motions.

24
25 //

26
27
28 //

//

MOTIONS

The plaintiff, UNITED STATES OF AMERICA, by and through its counsel, KAREN P. HEWITT, United States Attorney, and Caleb E. Mason, Assistant United States Attorney, hereby moves this Court for an order granting the following motions for:

1. Fingerprint Exemplars;
2. Reciprocal Discovery; and
3. Leave to File Further Motions.

The motions noted above are based on the files and records of this case, together with the following statement of facts and memorandum of points and authorities.

I

STATEMENT OF THE CASE

On June 25, 2008, a federal grand jury in the Southern District of California returned an Indictment charging Salvador Ramirez-Quebedo ("Defendant") with attempted entry after deportation, in violation of 8 U.S.C. § 1326(a). On June 26, 2008, Defendant was arraigned on the Indictment and pled not guilty. The motion hearing/trial setting date is July 25, 2008. The United States hereby files the following motions for fingerprint exemplars, reciprocal discovery and leave to file further motions.

II

STATEMENT OF FACTS

A. OFFENSE CONDUCT

On June 11, 2008, at approximately 8 p.m., a remote surveillance camera operator observed several individuals in an area known as "Stewart's Bridge," which is approximately two miles west of the San Ysidro, California, Port of Entry, and 100 yards north of the United States-Mexico international border fence. The operator alerted Border Patrol agents who were performing line watch duties in the area. The agents responded, and found six individuals hiding in the bushes. The agents approached the four individuals, identified themselves as Border Patrol Agents, and conducted field interviews. All six individuals, including an individual later identified as Salvador Ramirez-Quebedo, freely admitted that they were citizens and nationals of Mexico and did not have documentation to enter or remain legally

1 in the United States. All six aliens were arrested and transported to the Imperial Beach Border Patrol
2 Station for processing.

3 **B. DEFENDANT'S IMMIGRATION HISTORY**

4 A records check conducted at the station, based on Defendant's fingerprints and biographical
5 data, confirmed that Defendant is a citizen and national of Mexico, and that Defendant was ordered
6 excluded, deported, and removed from the United States to Mexico by an immigration judge on June
7 1, 2006, and was physically removed to Mexico that same day. After Defendant's last deportation, there
8 is no evidence in the reports and records maintained by the Department of Homeland Security that
9 Defendant applied to the U.S. Attorney General or the Secretary of the Department of Homeland
10 Security to lawfully return to the United States.

11 **C. DEFENDANT'S CRIMINAL HISTORY**

12 Defendant has no known criminal history in the United States.

13
14 **III**

15 **MEMORANDUM OF POINTS AND AUTHORITIES**

16 **A. MOTION FOR FINGERPRINT EXEMPLARS**

17 The United States requests that the Court order that Defendant make himself available for
18 fingerprinting by the United States' fingerprint expert. See United States v. Ortiz-Hernandez, 427 F.3d
19 567, 576-77 (9th Cir. 2005) (holding that the government may have defendant fingerprinted and use
20 criminal and immigration records in Section 1326 prosecution). Identifying physical characteristics,
21 including fingerprints, are not testimonial in nature and the collection and use of such evidence would
22 not violate Defendant's Fifth Amendment right against self-incrimination. United States v. DePalma,
23 414 F.2d 394, 397 (9th Cir. 1969). See also Schmerber v. California, 384 U.S. 757, 761 (1966)
24 (withdrawal of blood is not testimonial).

25 **B. MOTION FOR RECIPROCAL DISCOVERY**

26 The United States hereby requests Defendant deliver all material to which the United States may
27 be entitled under Fed. R. Crim. P. 16(b) and 26.2.

28 **1. Defendant's Disclosures Under Fed R. Crim. P. 16(b)**

1 The United States has voluntarily complied and will continue to comply with the requirements
2 of Fed. R. Crim. P. 16(a). As of the date of this Motion, the United States has produced 47 pages of
3 discovery (including reports of the arresting officers and agents, criminal history reports, and documents
4 concerning Defendant's criminal and immigration history). As of the date of this Motion, the United
5 States has not received any reciprocal discovery from Defendant. Therefore, the United States invokes
6 Fed. R. Crim. P. 16(b), requiring that reciprocal discovery be provided to the United States.

7 The United States hereby requests Defendant permit the United States to inspect, copy, and
8 photograph any and all books, papers, documents, photographs, tangible objects, or make copies of
9 portions thereof, which are within the possession, custody or control of Defendant and which Defendant
10 intends to introduce as evidence in his case-in-chief at trial.

11 The United States further requests that it be permitted to inspect and copy or photograph any
12 results or reports of physical or mental examinations and of scientific tests or experiments made in
13 connection with this case, which are in the possession or control of Defendant, which he intends to
14 introduce as evidence-in-chief at the trial, or which was prepared by a witness whom Defendant intends
15 to call as a witness. Because the United States will comply with Defendant's request for delivery of
16 reports of examinations, the United States is entitled to the items listed above under Fed. R. Crim. P.
17 16(b)(1). The United States also requests that the Court make such order as it deems necessary under
18 Fed. R. Crim. P. 16(d)(1) and (2) to ensure that the United States receives the discovery to which it
19 is entitled.

20 **2. Witness Statements Under Fed. R. Crim. P. 26.2**

21 Fed. R. Crim. P. 26.2 requires the production of prior statements of all witnesses, except a
22 statement made by Defendant. Fed. R. Crim. P. 26.2 requires reciprocal production of statements, in
23 accordance with the Jencks Act.

24 The timeframe established by Fed. R. Crim. P. 26.2 requires the statement to be provided after
25 the witness has testified. In order to expedite trial proceedings, the United States hereby requests
26 Defendant be ordered to supply all prior statements of defense witnesses by a reasonable date before trial
27 to be set by the Court. Such an order should include any form in which these statements are
28 memorialized, including but not limited to, tape recordings, handwritten or typed notes and/or reports.

C. MOTION FOR LEAVE TO FILE FURTHER MOTIONS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,) Criminal Case No. 08cr2123JLS
Plaintiff,)
v.) **CERTIFICATE OF SERVICE**
SALVADOR RAMIREZ-QUEBEDO,)
Defendant.)

IT IS HEREBY CERTIFIED THAT:

I, CALEB E. MASON, am a citizen of the United States and am at least eighteen years of age. My business address is 880 Front Street, Room 6293, San Diego, California 92101-8893.

I am not a party to the above-entitled action. I have caused service of:

UNITED STATES' NOTICE OF MOTIONS AND MOTIONS FOR:

- (1) **FINGERPRINT EXEMPLARS;**
- (2) **RECIPROCAL DISCOVERY; AND**
- (3) **LEAVE TO GRANT FURTHER MOTIONS**

on the following parties by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

Kasha Pollreisz, Esq.,
Bridget Kennedy
Federal Defenders of San Diego, Inc.
Attorneys for Defendant

I declare under penalty of perjury that the foregoing is true and correct. Executed on July 3, 2008.

s/ Caleb E. Mason
CALEB E. MASON